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EX PARTE OR LATE FILED

October 9, 2001

WRITTEN EX PARTE

Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
The Portals
445 12th Street, S.W.
Washington, D.C. 20554

RECEIVED
OCT - 9 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 01-277

Dear Ms. Salas:

The attached letter addressed to Luinn Fitch of the Department of Justice responds to a request for BellSouth's Exceptions to Recommended Order, filed with the North Carolina Utilities Commission on July 6, 2001.

In accordance with Section 1.1206, I am filing two copies of this notice and the attachment and request that you place them in the record of the proceeding identified above. The 20-page limit does not apply as set forth in DA 01-2286.

Very truly yours,


Jon Banks

Attachment

cc: Luinn Fitch
Jessica Rosenworcel
Susan Pié
James Davis-Smith
Cynthia Lewis

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October 9, 2001

Luinn Fitch
U. S. Department of Justice
Antitrust Division
1401 H Street, N.W.
Suite 8000
Washington, D.C. 20005

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OCT - 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: CC Docket No. 01-277

Dear Luinn:

Per your request, enclosed is BellSouth's Exceptions to Recommended Order, filed with the North Carolina Utilities Commission on July 6, 2001.

Very truly yours,


Jon Banks

Enclosure
cc: Jessica Rosenworcel
Susan Pié
James Davis-Smith
Cynthia Lewis

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**BEFORE THE
NORTH CAROLINA UTILITIES COMMISSION**

RECEIVED

OCT - 9 2001

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of:

General Proceeding to Determine)
Permanent Pricing for Unbundled)
Network Elements)

Docket No. P-100, Sub 133d

**BELLSOUTH'S EXCEPTIONS TO
RECOMMENDED ORDER**

BellSouth Telecommunications, Inc. ("BellSouth") submits the following Exceptions to the Commission's Recommended Order issued June 7, 2001 ("the Recommended Order"). BellSouth respectfully excepts to the Commission's Findings of Fact Nos. 2(c), 2(e), 5, and 6.

EXCEPTION NO. 1

The Commission should not require BellSouth to modify its provisioning process to permit CLPs to reserve specific loops as SL1 loops.

Discussion

In Finding of Fact No. 2(c), the Commission stated that BellSouth should permit a CLP to "determine for itself, based on loop qualification information provided by the ILEC and its own testing, whether a SL1 loop meets its needs, without having to pay for a designed loop, if it so chooses. In those cases, the Commission finds that the CLP should be permitted to reserve the loop as a SL1, without any minimum service guarantees from the ILEC." Recommended Order at p. 29. This finding relates to the testimony by the New Entrants that a "loop is a loop" and that BellSouth should only offer a single Service Level 1 ("SL1") loop that CLPs can use to support their xDSL services. Panel Testimony, Phase 1 Tr. Vol. 5 at 609-10. As BellSouth explained in its Post Hearing Brief and Proposed Order, rather than purchasing one of BellSouth's designed xDSL-capable loops, the New Entrants always have the option to purchase

a SL1 loop to support their xDSL service. But, the xDSL service may or may not work, depending upon the type of loop facilities used to provide the SL1 loop. Latham, Phase 1 Tr. Vol. 3 at 98.

In response to CLP requests in North Carolina and elsewhere in BellSouth's region, BellSouth developed a non-designed xDSL-capable loop (referred to as an Unbundled Copper Loop – Non-Designed or "UCL-ND") that enables CLPs to obtain a copper loop without the design features of BellSouth's other xDSL-capable loop offerings. In fact, some of the same parties to this proceeding (Covad, among others) executed a Settlement Agreement on March 27, 2001 in connection with a generic proceeding before the Georgia Public Service Commission concerning the rates, terms and conditions for xDSL-capable loops. A copy of the Settlement Agreement is attached as Exhibit "A." Although that agreement only binds the parties in Georgia, BellSouth has made the terms and conditions of the Settlement Agreement available effective March 31, 2001, to CLPs operating in its nine-state region.

Consistent with the terms of the Settlement Agreement, BellSouth offers the UCL-ND to CLPs in North Carolina at the SL1 recurring rates until such time as this Commission establishes permanent cost-based rates for the UCL-ND.¹ Because the UCL-ND is a "clean copper loop" that can be reserved² by the CLP, and the rate the CLP will pay for the UCL-ND is the same as the SL1 loop, BellSouth requests this Commission to find that BellSouth's offer to provide the UCL-ND to CLPs in North Carolina as detailed in Exhibit A makes it unnecessary for BellSouth to provide CLPs with the ability to reserve an SL1 loop.

¹ BellSouth filed proposed rates and a cost study to support the UCL-ND rate in Docket No. P-55, Sub 1022.

² An additional benefit of the UCL-ND loop (unlike the SL1 loop) is that BellSouth guarantees that it will not subsequently alter the characteristics of the UCL-ND loop during network upgrades.

EXCEPTION NO. 2

The Commission should not require BellSouth to submit additional cost studies or proposed rates for removing repeaters.

Discussion

In Finding of Fact No. 2(e), the Commission concluded that BellSouth had not submitted proposed rates or cost study support for removing repeaters from unbundled loops. Recommended Order at 54-55. Accordingly, the Commission ordered BellSouth to submit cost studies and proposed rates for that element. In fact, BellSouth's cost studies already include repeaters in Elements A.17.1, A.17.2 and A.17.5. These elements relate to "Load Coil/Equipment Removal."

Elements A.17.1 (Unbundled Loop Modification (ULM) Load Coil/Equipment Removal-Short), A.17.2 (ULM Load Coil/Equipment Removal-Long), and A.17.5 (Unbundled Sub-loop Modification – 2-w/4-w Copper Distribution Load Coil/Equipment Removal) apply for any and all equipment removal from the copper loop, including both load coils and repeaters. This fact is explained in the narrative description of these elements in the cost study:

The activities of conditioning a loop take place through the removal of equipment (such as load coils, low-pass filters, range extenders, etc.) and/or by removing bridged taps that have been attached to the copper loop. The ULM associated with removing load coils, low-pass filters, and other equipment, such as range extenders, is sub-divided into specific offerings: ULM Load Coil Short (ULM/LC-S) which is for equipment removal on short loops (i.e., 18 kilofeet or less); sub-loop ULM Load Coil Long (ULM/LC-L) which is for equipment removal on long loops (i.e., over 18 kilofeet); and ULM LC and BT for 2-wire or 4-wire copper distribution.

Hearing Exhibit DDC-1, at p 55. For BellSouth, the nonrecurring costs for load coil removal and repeater removal are the same. Therefore, BellSouth requests that the Commission revise its

Order to adopt the same nonrecurring charges for removing repeaters as those that the Commission ordered for removing load coils.

EXCEPTION NO. 3

The Commission should not require BellSouth to refile its proposed rates and cost study information for high-capacity loops.

Discussion

In Finding of Fact No. 5, the Commission ordered BellSouth “to refile its rates for high-capacity loops after having determined, based on North Carolina-specific data, the appropriate factors to be used in the cost study.” The proposed rates BellSouth submitted already include North Carolina-specific utilizations, vendor meld, distribution to code, and route-to-air ratios. For example, the material prices for the electronics associated with the DS3 Unbundled Local Loop in North Carolina shown in file DS3ULL.XLS worksheet Input Recurring are different from those filed in other states due to the use of state-specific utilizations and vendor meld. The material prices for fiber also shown on that worksheet are different from those filed in other states due to the use of North Carolina-specific distributions to code as well as utilizations and vendor meld. The route-to-air ratio is included on this same worksheet and is also North Carolina-specific. BellSouth’s cost study contains similar state-specific inputs for each of the other high capacity loops. Hearing Exhibit DDC-1. On the other hand, the probabilities of occurrence of OC-3, OC-12, and OC-48 electronics are the same for every state because these probabilities are based on forward-looking deployment plans (not actual), and these do not differ by state.

BellSouth has included North Carolina-specific data for those factors that can differ significantly from one state to another and, therefore, would have a material impact on the

proposed rates. It would be inefficient (if not impossible), however, to collect state-specific data for every assumption or factor in a cost study. Therefore, BellSouth has taken a balanced approach that includes state-specific data where appropriate. BellSouth requests that the Commission (1) clarify its Recommended Order to require North Carolina-specific data only where state-specific data will have a material impact on the cost study and, thus, on the proposed rates; and (2) recognize that BellSouth's cost studies are therefore appropriate.

EXCEPTION NO. 4

BellSouth is developing an electronic method of providing CLPs with access to information from its Corporate Facilities Database, as appropriate, in connection with an electronic loop qualification query. Therefore, direct access to that database is unnecessary.

Discussion

In Finding of Fact No. 6, the Commission concluded that BellSouth was “not providing nondiscriminatory access to loop qualification information.” Recommended Order at 78. Accordingly, the Commission ordered BellSouth to permit CLPs to access directly BellSouth’s Corporate Facilities Database (“CFD”). The Commission also ordered BellSouth to provide access to LFACS and LQS on a permanent basis. Both of these conclusions should be modified as set forth below.

As noted in BellSouth’s post-hearing brief, at the time of the hearing, BellSouth was in the process of implementing a process to provide CLPs with electronic access to loop make-up information. Pate, Phase 1 Tr. Vol. 5 at 193-94. Since November 18, 2000, CLPs have had electronic pre-order functionality to submit a query for loop make-up information contained in the LFACS database. This functionality is provided via the Telecommunications Access Gateway (“TAG”), RoboTAG™, and the Local Exchange Navigation System (“LENS”)

electronic interfaces. CLPs have access to loop qualification information in the same manner as does BellSouth's retail operations. That is, the loop qualification information used to determine whether a BellSouth customer qualifies for Fast Access[®] service is obtained from LFACS. If a CLP determines that it needs additional information that is not available electronically, the CLP can request a manual loop make-up request. This request is processed in substantially the same time and manner as would be a similar request (service inquiry) for a BellSouth customer as part of the order and provisioning process – the data must be retrieved from the CFD by personnel in BellSouth's Outside Plant Engineering department whether the request relates to a BellSouth customer or to a CLP customer. Thus, CLPs are not at a disadvantage when compared to BellSouth's retail operations.

Further, in September, 2001, BellSouth will make available a planned enhancement for an electronic query from LFACS to the CFD for loop qualification information. As a result of this enhancement, when a CLP sends an electronic query to LFACS for loop qualification information, and all the necessary information is not resident in LFACS, an electronic query will be automatically launched to the CFD to retrieve the required additional information. This additional loop qualification information resulting from the queried CFD will be automatically combined with the LFACS information and provided to the CLP. This entire process will be automated, and will occur as a result of the CLP's initial electronic query to LFACS. Also, the information obtained from the query to the CFD will be populated in the LFACS database and thus will be available going forward for future electronic loop qualification information queries. Therefore, it is not necessary to provide CLPs with direct access to the CFD to achieve parity with respect to this function.

Indeed, the provision of direct access to the CFD raises a number of concerns about the proprietary data contained in the CFD, both BellSouth's proprietary network information as well as certain information regarding BellSouth's end user customers. For example, the CFD provides detailed information on the exact location of cables serving military installations and financial institutions as well as police, fire, disaster recovery, and FAA locations, among others. Thus, the release of this information raises concerns not only about customer proprietary data, but also sensitive state and national security information. Such sensitive proprietary data should not be made available to every CLP operating in North Carolina. In fact, this additional customer-specific information is not required for loop qualification. Further, because the assignment information is not located in the CFD, but rather is located in LFACS, a loop cannot be qualified through the CFD.

Regarding the Commission's requirement that BellSouth make LFACS and LQS available to CLPs on a permanent basis, BellSouth requests that the Commission clarify its ruling so that BellSouth maintains the flexibility to upgrade or even to replace these systems in the future. That is, if BellSouth should desire to move to an entirely different electronic system for both its own use and the use of CLPs, the Commission's order should not prevent BellSouth from doing so. BellSouth, therefore, respectfully requests that the Commission clarify this requirement to read, "BellSouth will make LFACS and LQS – or a functionally equivalent electronic system – available to CLPs on a permanent basis." Such a clarification simply allows BellSouth the flexibility to upgrade, update, or possibly replace its electronic systems and platforms to recognize changes in requirements or technology.

CONCLUSION

For the foregoing reasons, the Commission should reconsider and/or clarify its Recommended Order.

Respectfully submitted this 6th day of July, 2001.

BELLSOUTH TELECOMMUNICATIONS, INC.

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all parties of record by placing a copy of same in the U.S. mail, first class postage prepaid, this 6th day of July, 2001.

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